

2. Special Contracts

1. Contracts of indemnity

Introduction to Contract of Indemnity : A contract of indemnity is “a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person.” [Sec. 124]

The party who promises to save the other from loss is known as ‘**indemnifier**’. The party who is promised to be saved or protected against loss is known as the **indemnity-holder or indemnified**.

Indemnity Meaning

- To make good the loss incurred by another person
- To compensate the party who has suffered some loss
- To protect a party from incurring a loss

Contract of Indemnity Definition

A contract is called as a ‘contract of indemnity’ if :

One party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.

Modes of Contract of Indemnity

Expressed: When a person expressly promises to compensate the other from loss.

Implied: When the contract is to be inferred from the conduct of the parties or from the circumstances of the case.

Essential Elements of a Contract of Indemnity

Contract: All the essentials of a valid contract must also be present in the contract of indemnity

Example: X asks Y to beat Z and promises to indemnify Y against the consequences. Y beats Z and is fined Rs.1,000. Y cannot claim this amount from X because the object of the agreement was unlawful.

Loss to One Party

A person can indemnify another person only if such other person incurs some loss or it has become certain that he will incur some loss.

Indemnity by The Promisor

The purpose of contract of indemnity is to protect the indemnity holder from any loss that may be caused to the indemnity holder.

Reason for Loss

The contract of indemnity must specify that indemnity holder shall be protected from the loss caused due to:

- Action of the promisor himself; or
- Action of any other person; or
- Any act, event or accident which is not in the control of the parties.

Rights of Indemnity Holder

(i) Right to Recover Damages : The indemnity holder has the right to recover all the damages which he is compelled to pay in any suit in respect of any matter covered by the contract of indemnity.

Right to Recover Costs

The indemnity holder has the right to recover all the costs which he is compelled to pay in bringing or defending such suit.

Condition:

- (a) The indemnifier authorised him to bring or defend the suit; or
- (b) The indemnity holder did not contravene the orders of the indemnifier; and the indemnity holder acted as it would have been prudent for him to act in the absence of any contract of indemnity.

(ii) Right to Recover Sums Paid : The indemnity holder has the right to recover all the sums which he has paid under the terms of a compromise of such suit.

- (a) The indemnifier authorised him to compromise the suit; or
- (b) The indemnifier holder did not contravene the orders of the indemnifier; and the indemnity holder acted as it would have been prudent for him to act in the absence of any contract of indemnity.

Rights of Indemnifier :

The Indian Contract is silent as to the rights of the promisor, i.e. indemnifier, such provision does not take away the rights of the indemnifier. The rights of an indemnifier are briefly stated as under :

1. Right to subrogation : On payment of the amount of loss or liability to the indemnified, the indemnifier is subrogated to all the rights of indemnified. On payment of the amount of loss, the indemnifier steps into the shoes of the indemnified. Therefore, he is entitled to the following rights :

- (a) Right to file suit against the person who is liable for the loss.
- (b) Right to claim all sums paid to the indemnified and damages suffered from the person who is liable for the loss.

2. Right to equities : On payment of the amount of loss or liability to the indemnified, the indemnifier is entitled to all equities which the indemnified could have enforced against the third party liable for loss.

3. Right to refuse indemnity : In case the loss caused to the indemnity-holder is beyond the scope of the contract, the indemnifier has right to refuse indemnity.

2. Contracts of Guarantee

Concept of Guarantee

"A contract of guarantee is a contract to perform the promise or discharge the liability, of a third person in case of his default." [Sec. 126]

A guarantee may be either oral or written.

'Contract of Guarantee'

A 'contract of guarantee' is a contract to:

- Perform the promise; or

- Discharge the liability, of a third person in case of his default.

‘Surety’

The person who gives the guarantee is called as ‘surety’

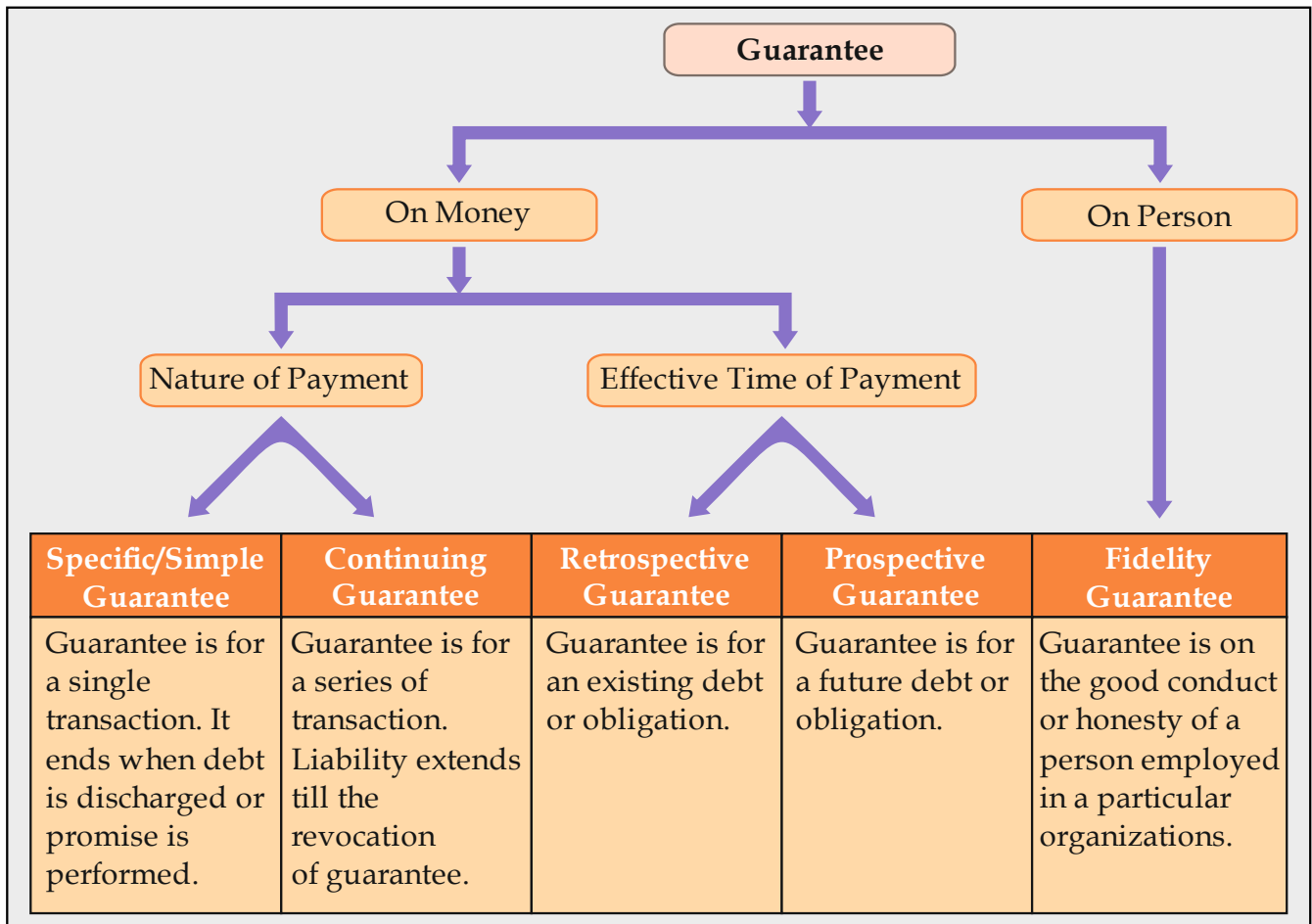
‘Principal Debtor’

The person in respect of whose default the guarantee is given is called as ‘principal debtor’.

‘Creditor’

The person to whom the guarantee is given is called as ‘creditor’.

Kinds of Guarantee



Essentials and Legal Rules for A Valid Contract of Guarantee

Must have all The Essentials of Valid Contract

- All the essentials of a valid contract must be present in the contract of guarantee.
- Exceptions:
 - (a) Consideration received by the principal debtor is a sufficient consideration to the surety for giving the guarantee.
 - (b) Even if principal debtor is incompetent to contract, the guarantee is valid. But, if surety is incompetent to contract, the guarantee is void.

Feature of Contract of Guarantee

1. Primary Liability of Some Person :

- The principal debtor must be primarily liable. However, even if the principal debtor is incompetent to contract the guarantee is valid.

- The debt must be legally enforceable.
- The debt must not be a time barred debt.
- 2. The Contract must be Conditional :**
 - The liability of surety is secondary and conditional.
 - The liability of surety arises only if the principal debtor makes a default.
- 3. No Misrepresentation :**
 - The creditor should disclose all the facts which are likely to affect the surety's liability.
 - There must not be any concealment of facts.
- 4. Form of Contract :** A contract of guarantee may be either oral or written.
- 5. Joining of Other Co-Sureties :**
 - The guarantee by a surety is not valid if:
 - A condition is imposed by a surety that some other person must also join as a co-surety; but
 - Such other person does not join as a co-surety.

Nature and Extent of Surety's Liability

Surety's Liability is Coextensive with Liability of Principal Debtor

General Rule :

- Surety is liable for all the debts payable by the principal debtor to the creditor.
- Accordingly, interest, damages, costs etc. may also be recovered from the surety.

Exception: The contract of guarantee may provide otherwise.

Commencement of Surety's Liability

- The liability of surety arises immediately on default by the principal debtor.
- The creditor is not required to:
 - (a) first sue the principal debtor; or
 - (b) first give a notice to the principal debtor.

Surety's liability may be limited

The surety may fix a limit on his liability up to which the guarantee shall remain effective.

Surety's liability may be continuous

- The surety may agree to become liable for a series of transactions of continuous nature.
- However, the surety may fix :
 - a limit on his liability upto which the guarantee shall remain effective;
 - a time period during which the guarantee shall remain effective.

Surety's liability may be conditional

The surety may impose certain conditions in the contract of guarantee. Until those conditions are met, the surety shall not be liable.

Rights of Surety

Rights against principal debtor

(i) Right of Indemnity :

- There is an implied promise by the principal debtor to indemnify the surety.
- The surety is entitled to claim from the principal debtor all the sums which he has rightfully paid.
- The surety cannot recover such sums, which he has paid wrongfully.

(ii) **Right of Subrogation :** On payment of a debt, the surety shall be entitled to all the rights which the creditor could claim against the principal debtor.

Rights against the creditor

(i) Right of Subrogation :

- The surety can claim all the securities which the creditor had at the time of giving of guarantee
- It is immaterial as to whether the surety had knowledge of such securities or not.
- If the securities are returned by the creditor to the principal debtor the surety is discharged to the extent of value of the securities so returned.

(ii) Right of Set Off :

- Any amount recoverable by the principal debtor may be claimed as deduction.
- Any amount recoverable by the surety may be claimed as deduction.

(iii) **Rights to Share Reduction :** If the principal debtor becomes insolvent, the surety may claim proportionate reduction in his liability.

(iv) **Right to Equities :** Upon discharge of the guaranteed obligation, the surety is entitled to all the equities available to the creditor not only against the principal debtor but also against all persons claiming through him.

(v) **Right to be Discharged :** A surety has a right to be discharged from the further obligation under the fidelity guarantee if the misconduct or dishonesty of the employee is proved, for whom he has given the guarantee.

(vi) **Right to Dismissal of Employee :** In case of fidelity guarantee, a surety can ask the employer to dismiss the employee who is a proved guilty of misconduct or dishonesty.

Rights against co-sureties

(i) Rights to Contribution :

General Rule

All the co-sureties shall contribute equally

Exceptions

- Under the contract of guarantee, the co-sureties may fix limits on their respective liabilities. Even in such a case, the co-sureties shall contribute equally, subject to maximum limit fixed by the co-sureties.

- The contract of guarantee may provide that the co-sureties shall contribute in some other proportion.

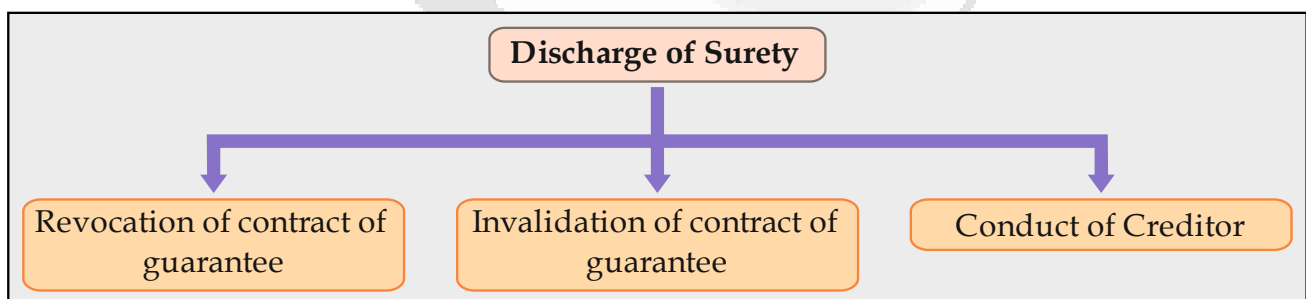
(ii) **Right to Share Benefit of Securities** : If one co-surety receives any security, all the other co-sureties are entitled to share the benefit of such security.

(iii) **Release of Co-Surety** : Where there are co-sureties, a release by the creditor of one of them does not discharge the others. It also does not free the surety so released from his responsibility to the other sureties. [sec. 138]

Distinction between Indemnity and Guarantee

Basis	Contract of Indemnity	Contract of Guarantee
Meaning	A contract by which one party promises to save the other from loss caused to him is called as a contract of indemnity.	A contract of guarantee is a contract to perform the promise, or discharge the liability of a third person in case of his default.
Parties	There are only two parties, viz, the indemnifier and the idemnity holder.	There are three parties, viz., the principal debtor, creditor and the surety.
Nature of liability	The liability of the indemnifier is primary and independent.	The liability of the surety is secondary and conditional.
Number of contract	In a contract of indemnity there is only one contract.	In the contract of guarantee, there are three contracts; first between principal debtors and creditor, second between creditor and surety, and third between surety and principal debtor.
Nature of contract	The contract of indemnity is for the reimbursement of the loss.	The contract of guarantee is for the security of the creditor.

Discharge of surety from liability



(I) Discharge of Surety by Revocation

(a) Notice of Revocation by Surety :

- **Specific Guarantee** : A specific guarantee can be revoked only if liability of principal debtor has not arisen.
- **Continuing Guarantee** : A continuing guarantee can be revoked only in respect of future transactions.

(b) **Death of Surety** : In case of death of surety, a continuing guarantee is automatically revoked in respect of future transactions.

(c) **By novation of contract** : Novation of contract means substitution of a new contract of guarantee for the existing one. It may take place between the same parties with new terms or between a new party and existing parties.

(II) Invalidation of Contract of Guarantee

(a) **Guarantee obtained by misrepresentation** : Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

(b) **Guarantee obtained by concealment** : Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstances, is invalid.

(c) **When co-surety does not join** : Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in as co-surety, the guarantee is not valid if that other person does not join.

(d) **Failure of consideration** : Existence of consideration is a must for a valid contract of guarantee in need be directed to the surety. Any thing done by the creditor for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

(III) Conduct of creditor :

(a) Variance in terms

If :

- Any variation is made subsequent to formation of contract of guarantee; and
- Such variation is made without the consent of surety;

Then :

- The surety shall be released for such transactions as take place after such variation.

(b) Release or discharge of principal debtor

If :

- The creditor makes a fresh contract with the principal debtor whereby the principal debtor is relieved from his liability; or
- The creditor does any act or omission resulting in discharge of the principal debtor;

Then :

- The surety is discharged.

(c) Composition with principal debtor

The surety is discharged if the creditor makes a composition with the principal debtor without obtaining the consent of surety.

(d) Giving extension of time to principal debtor

The surety is discharged if the creditor extends the time for repayment of the debt by the principal debtor without obtaining the consent of the surety.

(e) Loss of security by a creditor

The surety is discharged to the extent of security lost by the creditor.

3. Contract of Bailment

Meaning of contract of bailment

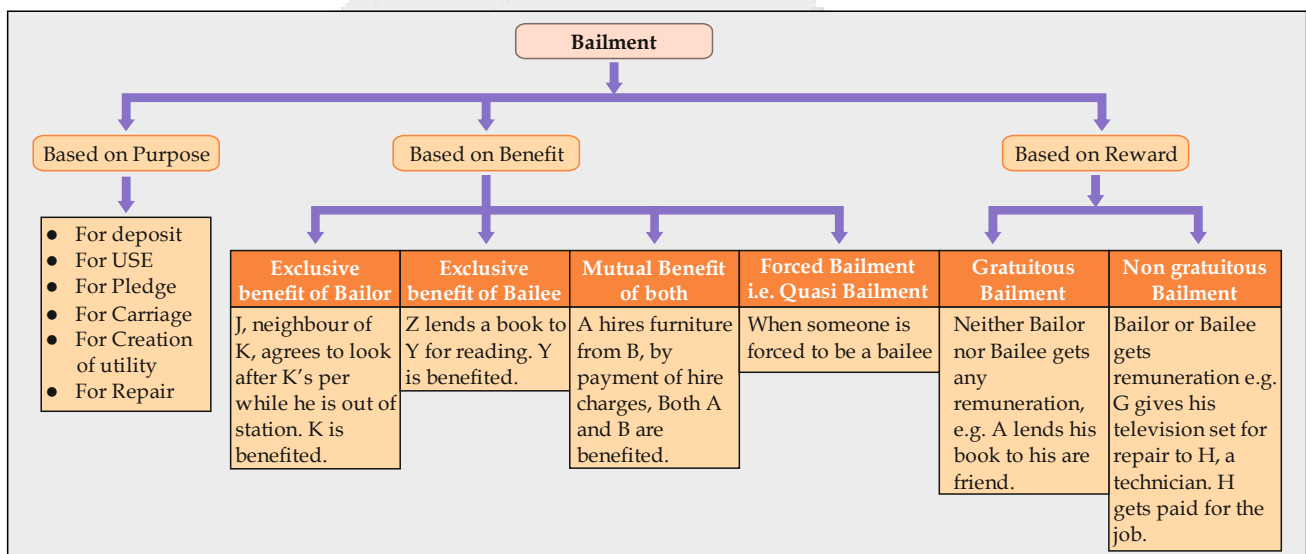
A '**bailment**' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned, or otherwise disposed of according to the directions of the person delivering them.

According to Section 148, 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

Bailor : The person delivering the goods is called the bailor. [Sec. 148]

Bailee : The person to whom the goods are delivered under the contract of a bailment is a bailee. [Sec. 148]

Sub-bailee : Sometimes there may be a sub-bailee in a bailment. When a bailee with the express or implied consent of the bailor, again bails the goods to a third party, such third party is known as sub-bailee.



Classification of Bailment

- For deposit** : It is a bailment for safe custody of goods.
- For use** : It is a bailment for the use of goods by the bailee with or without consideration.
- For pledge** : It is a bailment of goods as security of a loan.
- For carriage** : It is a bailment for carrying the goods from one place to another.
- For creation of utility** : It is a bailment for creation of utility. For instance, delivering cloth to a tailor for stitching into a shirt, giving gold to goldsmith for making ornaments etc.
- For repair** : It is a bailment for the purpose of repair or recycling of the goods. For example, delivering a scooter for service, delivering clothes for dry-cleaning etc.

On the basis of benefit :

- Bailment for bailor's sole benefit**, e.g. A, while going to theatre parks his car at parking centre for a payment.
- Bailment for exclusive benefit of bailee**, eg. A, gives his car to his friend B for a long drive without any charge.

3. Bailment for the mutual benefit, e.g. A hires CD player from B's music shop. Both A and B are being benefited mutually.

4. Forced bailment, i.e. quasi-bailment. It is also known as constructive bailment. It is the bailment which is created when the possession of goods passes to a person by mistake, accident, or through the force of circumstances under which there is imposed upon recipient the duty and obligation of a bailee.

Rules of Gratuitous Bailment

- (i) Duty to disclose known faults
- (ii) Right to require return of goods
- (iii) Duty to repay expenses
- (iv) Duty to indemnify in case of premature terminations
- (v) Termination by death

Distinction Between Gratuitous And Non-Gratuitous Bailment

Basis of distinction	Gratuitous bailment	Non-gratuitous bailment
1 Consideration	In this kind of bailment no consideration passes between the bailor and bailee.	In this kind of bailment at least some consideration passes between the bailor and bailee.
2 Benefit	It is for the benefit either of the bailor or of the bailee	It is for mutual benefit of both the parties.
3 Duty to disclose faults in the goods	The bailor is bound to disclose to the bailee faults in goods bailed of which bailor is aware. [Sec. 150]	The bailor is under a duty to disclose to the bailee faults in the goods bailed, whether he is or is not aware of the faults. [Sec. 150]
4 Burden of expenses	The bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of bailment, [Sec. 158]	The bailor is to bear the burden of extraordinary expenses which the bailee has incurred for the purpose of bailment.
5 Premature termination	The bailor has right to terminate the bailment even before the time agreed upon is over. [Sec. 159]	The bailor does not have a right to terminate the bailment before maturity.
6 Termination by death	It is terminated by the death either of the bailor or of the bailee. [Sec. 162]	It is not terminated by death of either of the party.

Essential of a valid contract of bailment

(i) Contract

- There must be a contract.
- The contract may be expressed or implied.

(ii) Goods

Bailment can be made of goods only.

(iii) Delivery

There must be delivery of goods by one person to another person.

(iv) Purpose of Delivery

- The goods must be delivered for some purpose.
- The purpose may be expressed or implied.

(v) Return or disposal of goods

- The delivery of goods must be conditional
- The condition shall be that the goods shall be :
 - Returned (either in original form or in any altered form); or
 - Disposed of according to the directions of the bailor, when the purpose is accomplished.

Specific Cases of Bailment

1. Seizure of goods by government officials : Government officials have powers under certain laws to seize goods of another person. The goods seized by the officials belong to its owner till the final order of confiscation is issued.

2. Deposit of instruments : Sometimes, instruments such as promissory note, National Savings Certificates (NSCs), etc. are deposited with the Government or any other person as security for liability.

3. Port authorities : They are liable as bailees.

4. Common carrier : A common carrier, e.g. railway, when accepts the consignments becomes bailee for the owner of the goods, i.e. bailor.

5. Parking place licence-holder : The relationship between the licence holder/owner of a parking lot and the car owner (who parks his car) is that of a licensor and licensee and not that of bailor or bailee.

6. Inn-keeper : An inn-keeper is bailee and his liability is governed by the provisions of secs. 151 and 152.

7. Cloak room : Goods entrusted to a cloak room for keeping in its custody for safety is a bailment.

8. Post office : The post office is a bailee in respect of the goods sent under the V.P.P. system. But, at the same time, it is an agent of the bailor. As an agent of the bailor, it cannot give delivery to the addressee except on payment of the stipulated amount.

9. Fair price shop : Agreement between a retailer and the government for distribution of goods through fair price shop is held to be a bailment.

10. Hire purchase : In a contract of hire-purchase of goods, there are two agreements :

- (a) Agreement of bailment for hire. It remains alive till the payment of all the installments of the hire.
- (b) Agreement to sell. Hire-seller agrees with the purchaser to sell the goods when all installments are paid.

No Bailment

1. Deposit with bank : Deposit of money in a saving or fixed deposit account in a bank is not a bailment for two reasons : (a) Money is not goods as per the definition of goods, and (b) the banker is not bound to return the same notes and coins. A bank also cannot exercise

right of lien as a bailee on money held under a fixed deposit. [Union Bank of India v. K.V. Venugopalan, AIR (1990) Ker. 223]

2. Collection of money by agent : An agent who collects money on behalf of his principal is not a bailee because he has custody of money not a lien on money. Moreover, he is not bound to return the very same money. [*Shankar Lal v. Bhura Lal*, AIR (1951) Ajm. 24]

3. Bank locker or safety vault : Placing of ornaments or valuables in a bank locker or safety vault is not a bailment, because there is no transfer of possession of ornaments or valuables. It is a contract of hiring only. But the 13th edition of Pollock and Mull's book on 'Indian Contract and Specific Relief Acts' states, "The liability of a bank towards the hirers of a locker in the bank is that of bailee". [National Bank of Lahore Ltd. V. Sohan Lal Sehgal, AIR (1962) Punjab 534]

Modes of Delivery

Actual Delivery

Transfer of physical possession of goods from one person to another.

Symbolic Delivery

- Physical possession of goods is not actually transferred.
- A person does some act resulting in transfer of possession to any other person.

Examples :

- Delivery of keys of a car to a friend
- Delivery of a railway receipt.

Constructive Delivery

If :

- A person is already in possession of goods of owner.
- Such person contracts to hold the goods as a bailee for a third person.

Then :

- Such person becomes the bailee, and the third person becomes the bailor.

Duties of bailor

i. Disclose faults in goods [Sec. 150]

Bailor is bound to disclose to Bailee, faults in the goods bailed, of which he has knowledge. He should also disclose such information which: (a) materially interferes with the use of goods, or (b) expose the Bailee to extraordinary risk.

Liability for Defects in Goods	
In case of Gratuitous Bailment	In case of Non-Gratuitous Bailment
Bailor is liable only for those losses which arise due to non-disclosed risks.	Bailor is liable for damages whether or not he was aware of the existence of faults.

Example: A owning a motorcycle, allows B, his friend, to take it for a joy ride. A knows that its brakes were not proper but does not disclose it to B. B meets with an accident. A is liable to compensate B for damages. But when A had lent the motorcycle on hire, he is liable to B even if he did not know of the failure of his brakes.

ii. Bear Expenses [Sec.158]

Expenses of Bailment	
In case of Gratuitous Bailment	In case of Non-Gratuitous Bailment
Bailor shall repay to Bailee, all necessary expenses incurred by him for the bailment	Bailor is liable to repay only extra-ordinary expense, and not the ordinary

Example : M lends his car to N and it runs out of petrol. N can recover the amount paid for refueling (ordinary expenses). If in case, the car suffers a breakdown, N can recover such charges as are paid by him in bringing it back to condition (extra - ordinary expenses). M hired the car to N, he shall be liable only for the repair charges, being extra ordinary expenses.

iii. Indemnify the bailee for defective title

The bailor shall indemnify the bailee for any loss caused to bailee due to defective title of bailor.

iv. Indemnify the bailee for premature termination

If :

- the bailment is gratuitous; and
- for a specific period.

Then :

- The bailor may compel the bailee to return the goods before expiry of the period of bailment; but
- The bailor shall indemnify the bailee for any loss incurred by the bailee.

v. Receive back the goods

- It is the duty of the bailor to receive back the goods, when returned by bailee.
- If the bailor wrongfully refuses to receive back the goods, he shall be liable to pay ordinary expenses of custody of goods incurred by the bailee.

vi. Duty to deliver the goods

A bailor is under a duty to deliver goods as per contract. The delivery may be actual, symbolic, constructive or delivery by attornment.

vii. To pay remuneration or charges to the bailee

Bailor must pay the remuneration or charges of the bailee as per the terms of the contract.

viii. To receive back the goods or to give direction for its disposal

The bailor is also under a duty to receive back the goods or give directions for its disposal after the specified time or when the purpose is accomplished.

Rights of a bailor

i. Terminate the bailment

If :

The bailee does any act inconsistent with the terms and conditions of the contract of bailment.

Then :

The bailment becomes voidable at the option of the bailor.

ii. Demand back The Goods

If :

The bailment is gratuitous; and

For a specific period.

Then :

- (a) The bailor may compel the bailee to return the goods before expiry of the period of bailment; and
- (b) The bailor shall indemnify the bailee for any loss incurred by the bailee.

iii. File suit against wrongdoer

The bailor has the right to sue :

- A third party who does any damages to the goods; or
- A third party who deprives the bailee from using the goods

iv. Sue the bailee

The bailor may sue the bailee to enforce his duties.

Duties of a bailee**i. Take reasonable care**

- The bailee must take such case of goods as a man of ordinary prudence would take care of his own goods.
- The bailee shall not be liable for any loss or destruction of goods, if :
 - (a) He is not negligent; or
 - (b) The loss was caused due to an act of God or other unavoidable reasons.

ii. Not to make Unauthorized use of Goods

- The bailee must not make any unauthorized use of the goods.
- If the bailee makes any unauthorized use of goods, then :
 - (a) The bailment becomes voidable at the option of the bailor; and
 - (b) The bailee shall be liable for any loss or damage even if such loss is caused due to an act of God or other unavoidable reasons.

iii. Not to mix goods**(a) Goods are mixed with bailor's Consent**

The parties shall have a proportionate interest in such mixture.

(b) Goods are mixed without bailor's consent, but the goods are separable

- The bailee shall pay the expenses of separation.
- The bailee shall pay damage incurred by the bailor.

(c) Goods are mixed without bailor's consent, and goods are not separable

The bailee shall compensate the bailor for any loss caused to him.

iv. Return the goods

- The bailee must return the goods, without waiting for demand from bailor, if :
 - (a) The time specified in the contract has expired; or
 - (b) The purpose specified in the contract is accomplished.
- If the goods are not so returned, then :
 - (a) The goods shall be at the risk of the bailee;

- (b) The bailee shall be liable for any loss or damage, even if such loss is caused without any fault or negligence of the bailee or due to an act of God or other unavoidable reasons.

v. Return accretion to goods

The bailee must return to the bailor any accretion (i.e., addition) to the goods bailed.

vi. Not to set up an adverse title

The bailee has no right to allege that the bailor had no authority to bail the goods.

Rights of a bailee

i. Right to compensation

The bailee has the right to be indemnified by the bailor, if :

- The bailor has no title to the goods; and
- As a consequence, the bailee suffers some loss.

ii. Return the goods

- It is the duty as well as the right of the bailee to return the goods to the bailor.
- In case of joint bailor, the goods may be returned to any of joint bailors.

iii. Recover charges incurred

(a) Extra ordinary expenses:

- The bailor is liable to pay the extraordinary expenses.
- The bailee may recover the extraordinary expenses paid by him.

(b) Ordinary expenses

If the bailment is gratuitous, the bailor is liable to pay the ordinary necessary expenses, i.e., the bailee has the right to recover the ordinary necessary expenses incurred by him.

iv. Suit for deciding the title

The bailee may apply to the court for deciding the title to goods, if a person other than the bailor claims that the goods belong to him.

File suit against wrongdoer

The bailee has the right to sue:

- A third party who does any damages to the goods; or
- A third party who deprives the bailee from using the goods.

Right of lien

The bailee has the right to retain the goods delivered to him until the charges due to him are paid by the bailor.

Meaning of Lien

Lien is a right of a person to retain the possession of goods belonging to another until certain demands or claims of the person in possession are satisfied.

Essentials of lien

1. Possession of goods : The person claiming the lien must be in possession of the goods.

2. Lawful possession : Possession obtained by coercion, misrepresentation, fraud or from a servant or agent having no power to deliver possession is not a lawful possession.

3. Continuous possession : There must be continuous possession of goods. If the owner of the goods has right to remove the goods from time to time, the bailee has no lien.

4. Claims against the owner : The lien is available only when the person in possession of the goods has certain unsatisfied demands or claims against the owner.

5. No contract to the contrary : There must not be any contract contrary to the right of lien.

6. Lien is right of defence but not of action. It cannot be exercised by filing suit against the owner of the goods, but there can be lien in respect of a time barred debt.

7. Lien is right to retain the goods and not a right to use the goods.

8. It is a personal right of a person conferred either by contract or by law which cannot be transferred to or shared with another person.



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Distinction between bailee's particular and general lien

	Basis of distinction	Bailee's particular lien	Bailee's general lien
1.	Nature of right	Particular lien gives right to retain only such goods in respect of which charges due remain unpaid.	General lien gives right to retain any goods belonging to another person for any amount due from him.
2.	Condition for exercising lien	Particular lien can be exercised only when some labour or skill has been expended on the goods, resulting in an increase in value of goods.	General lien may be exercised even though no labour no skill has been expended on the goods.
3.	Right to whom	Every bailee is entitled to particular lien.	General lien can be exercised by only such persons as are specified u/s 171. e.g., bankers, factors, wharfingers, Attomeys of High Court, policy brokers. Any other bailee may exercise general lien if there is an agreement to this effect.
4.	Period	Period, it terminates on the expiry of the specified period	Period of 2 months April - June. The Bailment terminates by the end of June
5.	Accomplishment of specified purpose	Where bailment is for a specified purpose, it terminates when such purpose is accomplished.	G hires tables and chairs, utensils, etc. from H for organizing his son's engagement. G shall return them once the engagement functions are over.
6.	Bailee's act inconsistent with conditions	When bailee does some act which is inconsistent with the term and conditions of bailment, the Bailor may	J gives his car to K keeping it in K's garage. K gives it to his son for racing. J can terminate the bailment.
7.	Destruction of subject matter	When goods bailed are destroyed, bailment comes to an end	K hires a cycle form L. When the cycle is damaged beyond repair in an accident, bailment ends.
8.	Gratuitous Bailment	(i) Gratuitous bailment can be terminated at any time. (ii) Also, a gratuitous bailment ends by the death of either bailor or bailee. (Sec162)	Note : Where premature termination of bailment by the bailor, causes loss to the bailee exceeding the benefits derived by him, the bailor shall indemnify the bailee.

Finder of Goods

Finder of lost goods [Sec 71]

A person, who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

Implied Agreement

There is an agreement, implied by law between finder and owner of goods.

Duties of finder

A finder of lost goods is treated as bailee of goods found. His duties are :

- (a) To take initiative to find the real owner of the goods,
- (b) To take reasonable care of the goods found,
- (c) Not to put the goods found for his personal use, and
- (d) Not to mix the goods found with his own goods.

Rights of finder

Suit for specific reward [Sec.168]	Right of sale [Sec.169]
Finder of goods is not entitled to sue that owner for compensation for trouble and expenses voluntarily incurred in - (a) preserving the goods, or (b) finding out the owner. However, he is entitled to -	<ul style="list-style-type: none"> If a thing which is commonly the subject of sale is lost, and Owner cannot be found with reasonable diligence, [or] Owner, if found, does not pay the lawful charges of the Finder.
<p>(a) Lien : Retain the goods against the owner till he receives such</p> <p>(b) Suit : Sue the owner for payment of any specific reward offered by the owner for the return of goods lost, and retains the goods till payment of such reward.</p>	<p>Then, Finder of Goods is entitled to sell the same when -</p> <p>(a) The thing is in danger of perishing, or the thing is in danger of losing the greater part of its value, or</p> <p>(b) The lawful charges of finder, amount to $\frac{2}{3}^{\text{rd}}$ of the value of the things lost and found.</p>

Termination of bailment

A contract of bailment terminates in the following circumstances :

1. **Expiry of time** : When a bailment is for a specified period of time, it terminates with the expiry of that time.
2. **Accomplishment of purpose** : When a bailment is for a specific purpose, it terminates with the accomplishment of the purpose.
3. **Breach of warranty** : When the goods are bailed for use with warranty as to fitness for use, and there is a breach of warranty, the bailment terminates.
4. **Inconsistent Act** : When the bailee does any act inconsistent with the conditions of the bailment, the contract of bailment is voidable at the option of the bailor.
5. **Destruction of subject matter** : When the subject matter of bailment is destroyed or becomes incapable of being used any more due to change in the nature of goods, the bailment is terminated.

6. **Demand of goods by gratuitous bailor :** A gratuitous bailor may at any time compel the bailee to return the goods bailed. As soon as goods are returned, the gratuitous bailment is terminated.
7. **Death :** A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

4. Pledge or Pawn

'Pledge'

The bailment of goods as security for payment of a debt or performance of promise is called 'pledge'.

'Pawnor'

The bailor in case of a pledge is called as 'pawnor'.

'Pawnee'

The bailee in case of pledge is called as 'pawnee'.

Essentials of a valid contract of pledge

(i) Contract

- There must be a contract
- The contract may be expressed or implied.

(ii) Goods

- Pledge can be made of goods only. Only existing goods can be pledged.
- Future & contingent goods cannot be pledged.

(iii) Delivery

There must be delivery of goods by one person to another person.

(iv) Purpose of delivery

- The goods must be delivered for some purpose.
- The purpose must be to deliver the goods as security for
 - (a) Payment of a debt; or
 - (b) Performance of a promise.
- Delivery of goods must be given under a contract.

(v) Return of Goods

- The delivery of goods must be conditional
- The condition shall be that the goods shall be:
 - Returned (either in original form or in altered form); or
 - Disposed of according to the directions of the pawnor when the purpose is accomplished.

(vi) Possession : Under the contract of pledge, the physical possession of goods may be either with the pawnor or pawnee as per the terms of the contract. But sometimes, the pawnee having physical possession of the goods may redeliver it to the pawnor for a limited or specific purpose such as for selling it on behalf of the pawnee.

(vii) Transfer of interest in the property : In a contract of pledge special property or interest in the goods is transferred to the pawnee. The absolute or general property in the goods remains with owner of the goods.

(viii) Priority of claim : The purpose of pledge is to secure the payment of the debt or performance of promise. Therefore, the pledgee becomes a secured creditor. He has a prior claim over the goods pledged than the other creditors.

Rights of pawnee

i. Right of retainer [Sec.173]

Pawnee may retain the goods pledged for:

- (a) Payment of the debt or the performance of promise,
- (b) Any interest due on the debt; and
- (c) All necessary expenses incurred by him with respect to possession or for preservation of goods pledged.

ii. Retainer for subsequent advances [Sec.174]

- (a) Where the pawnee lends money to the pawnor subsequently, after the date of pledge, it shall be presumed that he has a right of retainer over the goods already pledged in respect of the subsequent lending also.
- (b) This presumption can be made invalid only by an expenses provision to that effect.

iii. Reimbursement of expenses [Sec.175]

Where the pawnee incurs extraordinary expenses to preserve the goods pledged with him, he is entitled to receive such amount from the pawnor.

iv. Rights in case of default by pawnor [Sec.176]

- (a) **Suit:** Pawnee may institute a suit against pawnor when there is a default in payment of debt or performance of promise at the stipulated time.
- (b) **Retention/sale of Goods:** Pawnee may – (a) retain the goods pledged as collateral security, or (b) sell the goods pledged by giving a reasonable notice to the pawnor.
- (c) **Surplus/Deficit on Sale:** When there is a surplus on sale, pawnee shall pay the excess to the pawnor. In case of deficit, Pawnor shall be liable for the balance amount.
- (d) **No Notice:** Where the pawnee does not give a reasonable notice to the pawnor, the sale is valid, but pawnee is liable to pay damages to pawnor.

v. Right against true owner of goods [Sec.178A]

- (a) Where the pawnor has acquired possession of pledged goods, under a voidable contract u/s 19 or 19A but contract has not been rescinded at the time of pledge, the pawnee acquires a good title to the goods, against the true owner.
- (b) The title of pawnee is good only where – (a) he had no notice of the pawnor's defect in title and (b) he acts in good faith

vi. To retain accretions

In the absence of a contract to the contrary, a pawnee also has a right to retain the accretions to the pledged goods. However, the ownership to the accretions will remain with pawnor.

vii. To sell the goods

If the pawnee does not want to sue the pawnor, he may sell the goods pledged on default by the pawnor. However, the pawnee is bound to give a reasonable notice of sale to the pawnor before selling the goods.

But it should be noted that the pledgee has a right to sell, but has no obligation to sell.

Filing of the suit against pawnor does not take away the pawnee's right of sale as these two rights are not mutually exclusive.

viii. To recover the balance

If the proceeds of sale of the goods are less than the amount due in respect of the debt or promise, the pawnee is entitled to recover the balance from the pawnor.

Reasonable notice u/s 176 means that a notice of intended sale of the security by the Creditor within a certain date, so as to afford an opportunity to the Debtor to pay the amount within the time mentioned in the notice. Notice of sale is essential and a clause in the agreement excluding the requirement of Notice is inconsistent with the Act & is void and unenforceable.	Rrabhat Bank Ltd. Vs Babu Ram
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Duties of A Pawnor

i. Pay the debt, interest and other expenses : The pawnor is liable to pay the debt, interest and other expenses to perform his promise as the case may be.

ii. Pay deficit on sale : If the Pawnee sells the goods due to default by the pawnor, the pawnor must pay the deficit.

iii. Pay Extra - Ordinary Expenses : The pawnor is liable to pay to the Pawnee any extraordinary expenses incurred by the Pawnee for preservation of goods.

iv. Disclose Faults in Goods : The pawnor is liable to disclose all the faults which:

- are material for use of the goods; or
- may put the Pawnee to extraordinary risks.

v. Indemnify the Pawnee : If loss is caused to the Pawnee due to defect in Pawnor's title to the goods, the pawnor must indemnify the Pawnee.

vi. Pay the balance of debt, interest and other charges

vii. Redeem the goods pledged before.

Duties of Pawnee

i. Not to use The Goods :

- The pawnee has no right to use the goods
- However, he may use the goods, if he has been so authorised by the pawnor.

ii. Return The Goods : The pawnee must return the goods if the pawnor pays the debt or performs his promise.

iii. Take Reasonable Care : The pawnee must take such care of goods pledged as a man of ordinary prudence would take care of his own goods.

iv. Not to Mix Goods : The pawnee must not mix his own goods with the goods pledged.

v. Return Increase in Goods : The pawnee must return to the pawnor any accretion to the goods pledged with him.

vi. To give notice before sale of the goods.

vii. To pay the surplus of the proceeds of the sale of the goods pledged.

viii. To act in good faith and must not accept goods on pledge if he has knowledge that the pawnor has obtained the goods under a voidable contract.

Rights of A Pawnor

(i) Redeem the Goods Pledged : Right to recover back the goods by making payment of the debt or performance of promise.

Time for Redemption : Where time of redemption is fixed, the pawnor may exercise redemption :

(a) Within the time so fixed; or

(b) Even after expiry of time so fixed, provided:

- The pawnee has not sold the good; and
- The pawnee pays the pawnee all expenses arising on account of his default.

(ii) Enforce Pawnee's Duties : The pawnor has the right to enforce the duties of pawnee, if the pawnee fails to fulfill his duties.

(iii) Receive Increase in Goods : The pawnor has the right to recover from pawnee any increase in goods pledged.

(iv) Right to Receive Notice of Sale : In case of default by the pawnor to pay the debt or perform his promise, the pawnee has the right to sell the goods, after giving a reasonable notice to the pawnor. If the pawnee fails to give notice, the pawnor has the right to recover the loss incurred by him.

Different Between Pledge and Bailment

Basis	Pledge	Bailment
1. Purpose	Pledge is bailment of goods for a specific purpose, i.e. to provide a security for a loan or fulfillment of an obligation.	Bailment may be for purpose other than by way of providing security for a loan or fulfillment of an obligation. It may be for purpose like repairs, safe custody, etc.
2. Sale of Goods	Pawnee, i.e., Pledgee has a right of sale of goods pledged on default of pawnor. He can do so by giving a notice to the pawnor.	There is no right of sale to the Bailee. Bailee may either – (a) retain goods, or (b) sue the Bailor for non-payment of his dues.
3. Use of Goods	Pledge has no right of using goods pledged.	Bailee can use the goods bailed as per terms of contract.

5. Contract of agency

'Agent'

An 'agent' is a person employed to :

- Do any act for another; or
- Represent another in dealings with third persons.

'Principal'

'Principal' is The Person :

- For whom, an act is done by the agent; or
- Who is represented by the agent in respect of dealing with third persons.

Principal is Liable for The Acts of Agent

- The principal is liable for all the acts of an agent which are lawful and within the scope of agent's authority.
- The contracts entered into by the agent on behalf of the principal have the same legal consequences as if these contracts were made by the principal himself.

Who may Employ an Agent?

Any person may employ an agent if :

- He is of the age of majority; and
- He is of sound mind.

Who can be an Agent?

- Any person may become an agent.
- Even a minor or a person of unsound mind can become an agent

Liability of Agent

- Generally, an agent is liable to the principal
- An agent is not liable to the principal if he is a minor or is of unsound mind.

Test of Agency

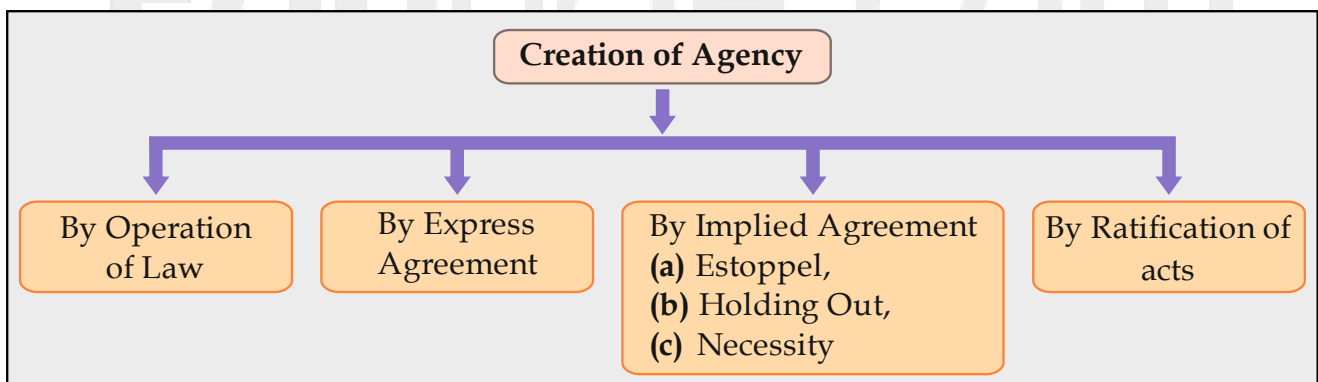
Where a person has the capacity to :

- Create contractual relations between the principal and a third party;
- Bind the principal by his own acts, there exists a relationship of agency.

Salient Features of Agency

- It is the name of a relation that exists between an agent and his principle
- An agreement is not necessarily a contract
- Principle must be a competent person; agent may be anyone
- No consideration is necessary for creating an agency
- There should be free consent given by the principal and the agent
- There should be intension to create contractual relations.
- There should be all the elements of a valid contracts.

Modes of Creation of Agency



I. Agency by Operation of Law

Agency by operation of law arises where the law treats one person as an agent of another.

In such a case, law presumes a person as an agent of another. For instance, every partner is an agent of the firm, for the purposes of the business of the firm. Every partner, therefore, binds the firm by his acts done for carrying on the usual business of the firm.

II. Express Agreement

- A person may employ another person as his agent by entering into an express agreement with him.
- The agreement may be either oral or written.

III. Implied Agreement

(a) Agency by estoppel

If:

- a person makes a representation (by his words or conduct) to a third person that a certain person is his agent; and
- the third party believing such representation to be true, enters into a contract with the pretended agent.

Then:

- the person making the representation is prevented from denying the truth of agency. He may be held liable as a principal by such third party.

(b) Agency of Holding Out

Such an agency comes into existence when a person by his affirmative or positive conduct leads third persons to believe that person doing some act on his behalf is doing with authority.

(c) Agency by Necessity - Conditions

- (i) There was an actual and definite necessity for acting on behalf of the principal.
- (ii) The agent was not in a position to communicate with the principal.
- (iii) The act was done for the purpose of protecting the interest of his principal.
- (iv) The agent has exercised such reasonable care as a man of ordinary prudence would have exercised in his own case.
- (v) The act was done Bonafide.

Wife as an Agent

Where a husband and wife are living together, we presume that the wife has her husband's authority to pledge his credit for the purchase of necessities of life suitable to their standard of living. But the husband will not be liable if he shows that:

- (i) He had expressly warned the tradesman not to supply goods on credit to his wife; or
- (ii) He had expressly forbidden the wife to use his credit; or
- (iii) He already sufficiently supplies his wife with the articles in question; or
- (iv) He supplies his wife with a sufficient allowance.

Similarly, where any person is held out by another as his agent, the third-party can hold that person liable for the acts of the ostensible agent, or the agent by holding out. Partners are each other's agents for making contracts in the ordinary course of the partnership business.

IV. Agency by Ratification

If :

- a person (viz., pretended agent) acts on behalf of another person (viz, the principal)
- the pretended agent acts without the knowledge or consent of the principal; and
- Afterwards, the principal accepts such act.

Then :

- Agency by ratification comes into existence.

Effects of Ratification

- The principal is bound by the acts ratified by him as if such acts had been performed by his authority.
- Ratification relates back to the actual date of the act that is ratified and not from the date when the act ratified.

Essentials of Valid Ratification

- (1) **Full Knowledge** : No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. In other words, the principal must have full knowledge of all the material facts.
- (2) **Whole Transaction** : It must be done for whole transaction in fact; ratification of the part of a transaction operates as a ratification of the whole transaction.
- (3) **Act on Behalf of Another Person** : The acts done by a person (i.e. pretended agent) on behalf of another person (i.e. pretended principal) can only be ratified.
- (4) **By the Principal** : Ratification can be made by only such person for whom the act was done.
- (5) **Existence of Principal** : The principal must be in existence at the time when the act was done in his name.
- (6) **Contractual Capacity** : The principal must have contractual capacity both at the time of entering into the contract and at the time of ratification.
- (7) **Lawful Acts** : Only those acts which are lawful can be ratified. Void, illegal, or ultra vires acts cannot be ratified.
- (8) **Acts within Principal's Power** : Ratification can be made only for such acts which principal had the power to do.
- (9) **Communication** : Ratification must be communicated to the third party so as to bind him
- (10) **Within Reasonable Time** : Ratification must be made within reasonable time of the act purported to be ratified.

Kinds of Agents

A. Based on Authority

1. Special Agent	2. General Agent	3. Universal Agent
<p>(a) Appointed to perform a particular transaction, e.g. sale of a house property.</p> <p>(b) Agent has limited authority</p> <p>(c) Agent cannot bind Principal for acts other than for which he is employed.</p>	<p>(a) Appointed to do all acts connected with a particular trade, business or employment.</p> <p>(b) Authority is wide and continues till agency is terminated.</p> <p>(c) Principle may limit his authority.</p> <p>(d) Principle is bound by all acts unless it is beyond authority of Agent.</p>	<p>(a) Appointment to do all acts for the principal.</p> <p>(b) Authority is unlimited</p> <p>(c) All acts of Agent bind his Principal provided that his acts are legal and agreeable as per law of land.</p>

B. Based on Nature of Work

1. Commercial or Mercantile Agents	2. Non - Mercantile Agents
<p>(a) Appointed to perform a particular transaction, e.g. sale of a house property.</p> <p>(b) Includes Banker, Factor, Auctioneer, Broker. Commission Agent, & Del Credere Agent.</p>	<p>(a) Not engaged in business of selling or buying goods, but act in their respective professional capacities, i.e. render professional services for their principal</p> <p>(b) Includes Solicitors, Attorneys. C & F Agents, Insurance Agents, etc.</p>

When an Agent is Personally Liable?

General Rule - No personal liability [Section 230]

In the absence of contract to contrary, an Agent cannot :

- Personally, enforce contracts entered into by him, on behalf of his Principal,
- Be held personally liable for them.

This is because the Agent merely acts on behalf of his Principal. Thus, he enjoys immunity from being personally sued.

Exceptions, i.e. Agent personally as well as Joint & Severally Liable

The Agent is personally liable in the following cases:

- Foreign Principal [Sec.230]** : Where the contract is made by an Agent for the sale or purchase of goods for a merchant resident abroad.
- Undisclosed Principal [Sec.230]** : Where the Agent does not disclose the name of his Principal.
- Principal cannot be Sued [Sec.230]** : Where the Principal, though disclosed, cannot be sued, e.g. Principal becoming of unsound mind, subsequent to appointment of agent.

4. **Acting for a Principal not in Existence** : Where the Agent acts for a Principal who is not in existence at the time of making contracts, he shall be personally held liable e.g. contracts entered into by Promoters before incorporation of a Company are made in their personal capacity and hence personally liable.
5. **Agency Coupled with Interest [Sec.202]** : Where the Agent has an interest in the subject matter of agency.
6. **Agent Guilty of Fraud [Sec.238]** : Where an Agent is guilty of fraud or misrepresentation in matters that are outside the scope of his authority, he is personally liable, and do not affect his Principal.
7. **Agent Exceeds Authority & Act not Ratified** : Where an Agent acts either without any authority or exceeds his authority, he shall be held personally liable when the principal does not ratify his acts.
8. **Agent Receives or Pays Money** : Where an Agent receives or pays money by mistake or fraud to a third party, he shall be personally liable to such third party. Also, he can personally sue the third party if the fraud or mistake is accountable to such third party.
9. **Express Agreement for Personal Liability** : Where an Agent expressly agrees to be personally bound.
10. **Execution of Contract in His Own Name** : Where an Agent executes a contract in his own name, without disclosing that he is acting as Agent for a Principal, he shall be personally liable, e.g. An Agent signs a Negotiable Instrument without making it clear that he is signing it as an Agent only, he shall be held personally liable on the same. He would be personally liable as Maker of P/N, even though he may be described as Agent.
11. **Trade Custom or Usage** : Where trade usage or custom makes an Agent personally liable.
12. **Agent with Special Interest** : An Agent with special interest or with a beneficial interest, e.g. a Factor or Auctioneer, can sue and be sued personally.
13. **Action against Agent or Principal [Sec 233]** : Where the Agent is personally liable, a person dealing with him may hold - (a) either him or (b) his Principal or (c) both of them liable. The liability of Principal and Agent is "joint and several".
14. **Exclusive liability [Sec. 234]** :

Where a person has made a contract with an agent and -	Such Third person cannot later on, shift the liability on to -
<ul style="list-style-type: none"> Induces such Agent to act upon it in the belief that only his principal would be held liable Induces the principle to act upon it in the belief that only his Agent would be held liable. 	<ul style="list-style-type: none"> The Agent, or The principle, respectively.

Agency Coupled with Interest

- When agency is created for securing some benefit to the agent over and above his remuneration as an agent, it is called as agency coupled with interest.

- The interest should exist at the time of creation of agency. If the interest arises after the creation of agency, then it would not be called as agency coupled with interest.
- Agency coupled with interest cannot be terminated to the prejudice of such interest.
- Agency coupled with interest does not terminate even on the death or insanity of the principal.
- Thus, such agency is irrevocable to the extent of such interest.

Irrevocable Agency

Agency Coupled with Interest

Such agency cannot be terminated to the extent of such interest

Part Exercise of Authority by The Agent

Where the agent has partly exercised the authority, the principle cannot revoke the authority as far as regard such acts and obligation as arise from already done in the agency

Personal liability incurred by Agent

Where the agent has incurred personal liability, the agency is irrevocable

Delegation of Authority

General Rule

The general rule is that an agent cannot lawfully employ another act, which he has expressly or impliedly undertaken to perform personally.

Exceptions

- (a) There is a custom or usage of trade to that effect.
- (b) Where power of the agent to delegate can be inferred from the conduct of the both the principle and the agent.
- (c) When the principal is aware of the intention of the agent to appoint sub agent, does not object to it.
- (d) When principle permits appointment of a sub-agent.
- (e) If the nature of the agency is such that the sub-agent is necessary.
- (f) Where the acts to be done is purely ministerial not involving confidence or use of discretion.
- (g) Where unforeseen emergencies arise rendering appointment of a sub-agent necessary.

Legal Relationship between the Principle and Sub-Agent and Agent

If Sub-Agent is Properly Appointment

- (a) Principal is bound to the third parties for the acts of sub-agent.
- (b) The agent is responsible to the principal for the acts of sub-agent.
- (c) The sub-agent is responsible to the agent for the acts done by him.
- (d) The sub-agent is not responsible to the principle, except in case of fraud or wilful wrong.

If sub-agent is not properly appointed.

- (a) Principal is not bound to the third parties for the acts of sub-agent.
- (b) The agent is responsible to the principle and third parties for the acts of sub-agent.

- (c) The sub-agent is responsible to the agent for the acts done by him.
- (d) The sub-agent is not responsible to the principle.

Liability of Principle to Third Parties for the Act of Agent

Principal is Liable for The Acts of Agent

- The principal is liable for all the acts of an agent which are lawful and within the scope of agent's authority.
- The contracts entered into by the agent on behalf of the principal have the same legal consequences as if these contracts were made by the principal himself.

When agent Exceeds His Authority

Whether the acts done within the authority are separable from the acts done beyond authority.

If yes – The principal is not bound for excess acts done by the agent.

If no – The principal is not bound by the transaction and the principal can repudiate the whole transaction.

Duties of An Agent

1. To conduct the business in accordance with the directions given by the principal
2. To work with reasonable diligence, care and skill.
3. To render proper accounts to the principal on demand.
4. To communicate with his principal in case of difficulty and seek his instructions.
5. Not to deal on his own account unless all the material facts have been disclosed to the principal and consent of the principal has been obtained.

If the agent, without the knowledge of the principal, deals in the business of agency on his own account, the principal has the following rights:

- (a) He may repudiate the transaction, if the agent dishonestly conceals any material facts or the dealings of the agent prove to be disadvantageous to him.
 - (b) He may claim from the agent the agency business other than the agreed remuneration.
6. Not to make any secret profit out of the agency business other than the agreed remuneration
 7. To remit to the principal all the sums received in the principal's accounts in accordance with the terms and conditions of contract of agency.
 8. Not to delegate authority or appoint sub – agent.
 9. To protect and preserve the interest on behalf of the principal's representative in case of his death or insolvency of the principal.
 10. Not to use information obtained in the course of the agency against the principal.
 11. An agent is bound to render proper accounts to his principal on demand.
 12. The agent is bound to pay to his principal all sums received on his account.
 13. It is a duty of an agent not to set up his own title or title of third parties on the goods or property received by him from his principal.
 14. It is also a duty of an original agent to be bound by and liable for the acts of sub-agent appointed by him without having authority.

15. An agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case.
16. An agent is also personally liable for misrepresentation made for fraud committed in the matters which do not fall within his authority.
17. An agent must not do anything which causes his own interest to conflict with those of his principal.

Rights of An Agent

1. To retain money out of the sums received in agency business for advances made or expenses incurred and remuneration due to him.
2. To receive the agreed remuneration. If the remuneration is not fixed, then he has the right to recover such remuneration as is usual and customary in such business.
3. Right of lien on principal's goods, papers and other property until the amount due to him in respect of the same is paid.
4. An agent has the right to be indemnified by the principal against the consequences of all lawful acts done in exercise of the authority conferred on him.
5. An agent has the right to be indemnified by the principal against consequences of acts done in good faith that caused an injury to third person.
6. To claim compensation for injury caused because of principal's neglect or want of skill.
7. An agent has a right to stop the goods in transit in the following cases :
 - (i) Where the agent has bought goods on behalf of his principal either with his own money or by incurring a personal liability for the price.
 - (ii) Where the agent is personally liable (or he is del credere agent) to his principal for the price of the good sold.

Duties of the Principal

1. To pay remuneration to his agent.
2. To indemnify the agent against the consequences of lawful acts.
3. To indemnify the agent against the consequences of acts done in goods faith.
4. To indemnify the agent in respect of injury caused by his neglect or want of skill.

Duties or responsibilities of principal to third parties are as under :

1. To be bound by all acts of the agent acting within the scope of his authority.
2. To be bound by misrepresentation or fraud of his agent in the course of his employment.
3. To be bound by notice given to the agent.
4. To be responsible for contracts entered into by agent though his name is not disclosed.

Rights of the Principal

1. To direct the agent for the conduct of his business.
2. To claim compensation for loss or damages caused to him as direct consequence of the agent's neglect, want of skill or misconduct.
3. To demand proper accounts of the business of agency.

4. To repudiate transaction done without his consent and knowledge.
5. To claim the benefit which may result to the agent from a transaction done without his consent or knowledge.
6. To claim all sums received by the agent on his behalf.
7. To empower his agent to employ sub-agent.
8. To hold the agent liable for unauthorised appointment of subagent.
9. To empower his agent to name substituted agent.
10. To hold the agent liable for not using same amount of discretion as man of ordinary prudence uses in his own case.
11. To restrain the agent from using information received in the course of agency, against him.

Relations of principal with third parties

The relations of principal with third parties are governed by the agent's authority conferred on him by the principal. When an agent acts within the scope of his authority, the principal is bound by obligations arising from the acts done by the agent.

Extent of Agent's Authority : The extent of agent's authority may be determined by the following :

1. Actual or real authority.
2. Ostensible or apparent authority.
3. Authority in emergency

1. Actual or real authority : Actual authority is the authority which as been conferred on the agent by his principal. The authority conferred by the principal may be either express or implied.

Express authority is the authority conferred by spoken or written words by the principal. Implied authority is the authority conferred upon the agent by the conduct of the principal. Implied authority is also an actual authority.

2. Ostensible or apparent authority : Ostensible authority is the authority of an agent that appears to others, but he has no authority at all. It is not actually granted either expressly or impliedly to an agent by the principal.

But when a principal by his act or conduct causes others to reasonably believe that the agent has that authority, the principal is liable to them.

Ostensible authority may arise from the words or conduct of the principal or the course of dealing adopted in a particular case. Sometimes, the usages or customs of a particular business of agency also give rise to such authority.

It is worth noting that the ostensible authority often coincides with actual authority and sometimes it exceeds actual authority.

An ostensible authority, once created, continues to exist unless it is terminated by a notice to the third parties. It cannot be terminated or restricted privately.

3. Authority in emergency : The scope of agent's authority is also extended in case of emergency. An agent has authority in an emergency to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Termination of Agencies

Termination of agency means the end of relation between a principal and his agent. The provisions relating to termination of agency are contained in Section 201. All the modes of termination of agency may be classified under the following two heads :

- I. Termination by acts of the parties, and
- II. Termination by operation of law.

I. Termination by Acts of the Parties :

1. Agreement : An agency may be terminated by the mutual agreement between the principal and the agent. Both the parties are at liberty to put an end to the agency by an agreement at any time and at any stage.

2. Revocation by principal : A principal can terminate the agency by revoking his agent's authority. However, agency must be terminated before the agent has exercised the authority so as to bind his principal.

The revocation of agency may be expressed or implied from the conduct of the principal.

3. Renunciation by agent : An agent may also terminate the agency by renouncing the business of the agency. [Sec. 201] Renunciation by the agent is subject to the following rules:

- (i) When the agency is for a fixed period, the agent will be liable to compensate the principal for any previous renunciation without sufficient cause.
- (ii) A reasonable notice of renunciation must be given by the agent. If no notice is given, the damage thereby resulting to the principal must be made good by the agent. [Sec. 206]
- (iii) Renunciation may be expressed or implied from the conduct of the agent. [Sec. 207]

II. Termination by Operation of Law :

1. Completion of agency business : An agency stands terminated when the business of agency is completed.

2. Death : Death of the principal or agent terminates the agency.

3. Winding-up of a company or dissolution of a firm : Where a company is the principal or agent, its winding up renders it legally dead.

4. Insanity : When the principal or agent becomes of unsound mind, the agency is terminated.

5. Insolvency : An agency also stands automatically terminated by the insolvency of the principal.

6. Expiry of time : Where the agency is for a fixed period of time, it comes to an end after expiry of that time.

7. Destruction of the subject-matter : Where the very subject-matter for which an agency was created, is destroyed, the agency comes to an end.

8. Principal becoming an alien enemy : Where the principal and the agent are nationals of two different countries, the contract of agency is valid so long as the relations between the countries are normal.

9. Termination of sub-agent's authority : The sub-agent's authority automatically comes to an end with the termination of the agent's authority.

10. Event rendering the agency unlawful : Agency is created for doing a lawful act but sometimes a subsequent event may render the act of the agency as unlawful.

11. Impossibility : An agency is also terminated if the accomplishment of the object or task of agency becomes impossible.

When Termination of Agency Takes Effect?

The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or so far as regards third persons, before it becomes known to them.



Exercise-3 : Review Your Progress

1. *When is the communication of a proposal complete:*
 - (A) *When it comes to the knowledge of the person to whom it is made*
 - (B) *Only when the proposal, acceptance or revocation of the proposal is recorded in writing*
 - (C) *When the other party gives his assent or dissent to the proposal*
 - (D) *Only when a clear verbal communication of such proposal is made*
2. *Which of the following feature is not essential for a contract:*
 - (A) *It should be in writing only*
 - (B) *free consent of parties competent to contract*
 - (C) *lawful consideration and with a lawful object*
 - (D) *It should not be declared void expressly*
3. *Which of the following is not a necessary feature for free consent:*
 - (A) *When the consent is not caused by coercion*
 - (B) *When the consent is not caused by undue influence*
 - (C) *When the consent is not caused by mistake*
 - (D) *When the consent is not caused by misunderstanding*
4. *Which of the following act does not constitute fraud:*
 - (A) *where a person stands in a fiduciary relation with the other and induces the other person to act on his directions*
 - (B) *the active concealment of a fact by one having knowledge or belief of the fact*
 - (C) *a promise made without any intention of performing it*
 - (D) *the suggestion as a fact, of that which is not true, by one who does not believe it to be true*
5. *Which of the following does not constitute misrepresentation:*
 - (A) *any breach of duty which, without an intent to deceive, gains an advantage to the person committing it*
 - (B) *the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true*
 - (C) *causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is subject of the agreement*
 - (D) *any act fitted to deceive the other party wilfully*



Exercise-3 : Review Your Progress

6. *Contingent contract to do or not to do anything on the happening of an uncertain future event:*
 - (A) *Is never enforceable*
 - (B) *Is enforceable since the time of making it*
 - (C) *Becomes enforceable in the immediate possibility of happening of that event*
 - (D) *Becomes enforceable only on the happening of that event*
7. *When a party to a contract fails to perform a contract within the fixed time:*
 - (A) *Such contract remains valid provided the promise is fulfilled whether at the time of performance or later*
 - (B) *Such a contract becomes void*
 - (C) *Such contract becomes voidable at the option of the promise, if the intention of the parties were that time should be of essence of the contract*
8. *In case of breach of contract of sale of some rare article or thing for which there is no substitute in the market, the Court may grant:*
 - (A) *Quantum Meruit*
 - (B) *Rescission*
 - (C) *Injunction*
 - (D) *Specific Performance*
9. *What is the meaning of novation?*
 - (A) *Rescinding of a contract*
 - (B) *Alteration of a contract*
 - (C) *Change in provisions of a contract*
 - (D) *Substituting an old contract for a new one*
10. *What is contract of indemnity :*
 - (A) *A contract by which one party promises to save any third party from loss caused to that party by the contract of the promisor himself, or by the conduct of any other person*
 - (B) *A contract by which one party promises to provide insurance to the other in order to cover up any losses that may arise in the contract*
 - (C) *A contract by which one party promises to save the other from loss caused to him by the contract of the promisor himself, or by the conduct of any other person*
 - (D) *A contract in which one party appoints a guarantor to cover up any losses that may arise in the contract*



Exercise-4 : Review Your Progress

1. Which of these contracts has three parties consisting of creditor, principle debtor and surety:
 (A) Contract of indemnity (B) Contract of surety
 (C) Contract of pledge (D) Contract of guarantee
2. X transfers possession or custody of the farmland to his son, S. S shall pay rent or a lease fee in return. S only receives custody and control of the property, but X still owns it. X is thus responsible for paying the property taxes and is liable for what happens on the land. This kind of contract or arrangement is called:
 (A) Guarantee (B) Bailment
 (C) Pledge (D) Set off
3. An Agent's authority can be created
 (A) Only by expressly writing the terms thereof
 (B) Only by implication
 (C) Only by expressly writing the terms thereof and registering the same with subregistrar
 (D) either expressly or impliedly
4. For the acts of a person appointed as a sub-agent by the agent without having an authority to do so:
 (A) The agent is responsible to the sub-agent only
 (B) The agent is responsible to the principal only
 (C) The agent is responsible to third person only
 (D) The agent is responsible to both the principal and third person
5. Which of the following statement is correct with regard to the termination of agency in which the agent himself has an interest in the subject matter:
 (A) such an agency can be terminated by the principal at his will
 (B) such an agency can be terminated on the death or insanity of the principal
 (C) such an agency cannot be terminated at all
 (D) such an agency can be terminated only upon an express contract to the said effect
6. Doctrine of frustration will not apply in the case of:
 (A) Commercial hardship
 (B) Default of the contracting party himself
 (C) Failure of one of the objects of a contract
 (D) All of the above

**Exercise-4 : Review Your Progress**

7. *The nature of a wagering agreement was explained in :*
(A) *Mohori Bibi v. Dharmodas Ghose*
(B) *Derry v. Peek*
(C) *Carlill v. Carbolic Smoke Ball Co.*
(D) *None of these*
8. *For the acts of a person appointed as a sub-agent by the agent without having an authority to do so :*
(A) *The agent is responsible to the sub-agent only*
(B) *The agent is responsible to the principal only*
(C) *The agent is responsible to third person only*
(D) *The agent is responsible to both the principal and third person*
9. *What is the minimum consideration required to create an agency ?*
(A) *Minimum of Rupees One Lakh*
(B) *Minimum of Rupees One Thousand*
(C) *No consideration at all is required*
(D) *Minimum of Rupees Ten Thousand*


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Exercise-5 : Review Your Progress

1. Match List-I with List-II and select the correct answer using the codes given below the lists :

List-I

- (a) Contracts opposed to public policy
- (b) Agreement where object is
- (c) Intention to create legal obligations
- (d) Contracts of utmost good faith

List-II

- (i) Contract of Insurance
- (ii) Agreement hostile to friendly States uncertain
- (iii) Void and unenforceable
- (iv) Essential elements for valid contracts

Codes:

- | | (a) | (b) | (c) | (d) |
|-----|------|-------|-------|-------|
| (A) | (i) | (iv) | (iii) | (ii) |
| (B) | (iv) | (ii) | (i) | (iii) |
| (C) | (ii) | (i) | (iii) | (iv) |
| (D) | (ii) | (iii) | (iv) | (i) |

2. An anticipatory breach of contract occurs :

- (A) When prior to the promised date of performance, the promisor absolutely repudiates the contract.
- (B) When after the promised date of performance, the promisor absolutely repudiates the contract.
- (C) When prior to the promised date of performance, the promisor partially repudiates the contract.
- (D) None of the above

3. Consideration must move at the desire of :

- (A) The promisee
- (B) The promisor
- (C) Promisor or any third party
- (D) Both the promisor and the promisee

4. A letter of acceptance communicated by post is lost in transit :

- (A) There is no contract as the acceptance has not come to the knowledge of the proposer
- (B) There is no contract as the acceptance is not communicated
- (C) There is a contract as the letter of acceptance is put in the course of transmission
- (D) None of the above



Exercise-5 : Review Your Progress

5. Which of the following Sections mandates that every agreement of which the object or consideration is unlawful is void ?
 (A) 22 (B) 23
 (C) 24 (D) 25
6. Consideration includes either _____ or _____.
 (a) To do an act
 (b) To abstain from doing an act
 (c) To provide environment friendly material
 (d) To deliver goods in time
 (A) (a) and (b) (B) (a) and (c)
 (C) (b) and (d) (D) (c) and (d)
7. Which of the following statement is correct with regard to the termination of agency in which the agent himself has an interest in the subject matter:
 (A) such an agency can be terminated by the principal at his will
 (C) such an agency can be terminated on the death or insanity of the principal
 (D) such an agency cannot be terminated at all
 (D) such an agency can be terminated only upon an express contract to the said effect
8. A subagent is a person employed by and acting under the control of
 (A) The principal only
 (B) The original agent in the business of agency only
 (C) Both the principal and original agent only
 (D) Neither the Principal nor the original agent
9. For the fraudulent act or wilful wrong of a subagent who had been duly appointed, the subagent is:
 (A) Responsible to the agent only
 (B) Responsible to the principal only
 (C) Responsible to the agent and principal both
 (D) Responsible to the third party

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